

### **Remarks**

Claims 38-49, 81-90, and 98-102 are pending in the application. Claims 43-48 are withdrawn from consideration. Claims 39-42, 49, 81-90, and 98-100 stand rejected.

Previously presented claims 101 and 102 depended from any of claims 38, 49, 81, 84, and 100. Claims 101 and 102 are currently amended solely to re-write them in independent form. In particular, claims 101 and 102 have been amended to incorporate the language of claim 38 into those claims.

New claims 103-110 have been added to re-write claims 101 and 102 in independent form. In particular, claims 103 and 104 incorporate the language of claim 49 into claims 101 and 102; claims 105 and 106 incorporate the language of claim 81 into claims 101 and 102; claims 107 and 108 incorporate the language of claim 84 into claims 101 and 102; and claims 109 and 110 incorporate the language of claim 100 into claims 101 and 102.

No new matter has been added by the present Amendment. Applicant specifically reserves the right to pursue the subject matter of the canceled or amended claims in a related application. The present Amendment is introduced for the *sole* purpose of furthering prosecution. Applicant respectfully requests reexamination and reconsideration of the case in light of the present Amendments and the following remarks. Each of the rejections levied in the Office Action is addressed individually below.

### Allowable Claims

Applicant notes that on the first page of the Office Action, labeled “Office Action Summary,” the “Disposition of the Claims” indicates that claims 101 and 102 have been rejected (see item #6). Upon examination of the Office Action, however, Applicant noticed that the Examiner did not include claims 101 and 102 in any of the actual rejections levied. Applicant, therefore, concluded that claims 101 and 102 were *not* rejected, but were included in the “Disposition of the Claims” in error. Applicant, therefore, respectfully submits that claims 101 and 102 are allowable if rewritten in independent form. Without agreeing with the Examiner’s rejection of the other claims, and *solely* in order to expedite this case toward allowance, Applicant has canceled all claims except for claims 101 and 102 and has re-written those claims into independent form. Applicant notes that this necessitated the addition of new claims 103-110 in order to expand out the multiple dependencies that were present in previously presented

claims 101 and 102. Applicant, however, submits that each of the present claims 101-110 simply corresponds to claim 101 or 102 re-written in independent form. Applicant, therefore, respectfully submits that no rejections remain and that the application is in condition for allowance.

#### Rejections under 35 U.S.C. § 103(a) as allegedly being obvious

Claims 38-42, 49, 81-90, and 98-100 stand rejected under 35 U.S.C. § 103(a) on the ground that they are unpatentable over Abe *et al.* (2001, *Eur. J. Pharm. Sci.*, 13:61-69) and four additional references, *i.e.*, Tuschl *et al.* (PCT Patent Publication WO 02/44321), Astriab-Fisher *et al.* (2000, *Biochem. Pharmacol.*, 60:83-90), Lewis *et al.* (US Patent Publication 2003/0125281) and Deonarain *et al.* (1998, *Expert Opin. Ther. Patents*, 8:53-69), and evidenced by two more references, *i.e.*, Caplen (2003, *Expert Opin. Biol. Ther.*, 3:575-86) and Trubetskoy *et al.* (US Patent Publication 2004/0162235).

Without agreeing with the Examiner's rejection, and *solely* to expedite this case toward allowance, Applicant has canceled claims 38-42, 49, 81-90, and 98-100. Applicant, therefore, respectfully submits that the rejection is rendered moot by the present Amendment.

#### Obviousness-Type Double Patenting

The Examiner has levied a *provisional* obviousness-type double patenting rejection, asserting that claims 38-42, 49, 81-90, and 90-100 pending in the present application are not patentably distinct from claims 12, 22, and 24-27 of co-pending U.S. application U.S.S.N. 11/259,434.

Without agreeing with the Examiner's rejection, and *solely* to expedite this case toward allowance, Applicant has canceled claims 38-42, 49, 81-90, and 98-100. Applicant, therefore, respectfully submits that the rejection is rendered moot by the present Amendment.

#### Conclusion

For all of the reasons set forth above, each of the rejections in this case should be removed and the application should proceed to allowance. A Notice to that effect is requested.

If, at any time, it appears that a phone discussion would be helpful, the undersigned would greatly appreciate the opportunity to discuss such issues at the Examiner's convenience.

Respectfully submitted,

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